

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 475 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BALVANTSINH RAMSINH

Versus

STATE OF GUJ

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Appearance:

MR PJ YAGNIK for Petitioner

MR AJ DESAI ASST. PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE R.BALIA.

Date of decision: 24/09/96

ORAL JUDGEMENT

(Per N.J. Pandya, J)

1. The appeal is against the order of conviction passed by the learned Sessions Judge, Surendranagar under the provision of Section 20(b)(II) of NDPS Act, by

judgement dated 13.5.1992. The learned Sessions Judge after holding the accused appellant guilty for the aforesaid offence awarded sentence of ten years rigorous imprisonment and fine of Rs.1.00 lakh and in default to undergo four years rigorous imprisonment.

2. The complaint on behalf of State is Shri Patel, who at the relevant point of time was working as Inspector in Local Crime Branch of District Surendranagar at Surendranagar. On 21.12.1991, he received information to the effect that a person conforming to the body built of the accused is about to pass by the public road near the ST bus stand of Surendranagar carrying on his person contraband article which ultimately turned out to be charas. The panchnama which was drawn up, that is, first part Exh.7 at page 39, also contains in it reference to the name of the accused also.

3. Accordingly, he prepared the said panchnama Exh.7 first part and along with panchas went to the designated spot where after some wait they saw the described person coming and actually tried to apprehend him. The person made attempt to run away but without success.

4. The appeal is required to be allowed on the short point that the requirements of Section 41, 42 and Section 50 of the NDPS Act are not fulfilled. The said complainant Shri Patel has been examined as prosecution witness No.1 at Exh.6. In his cross examination at paper book page 35, he has categorically admitted that after receiving the said information and even after arresting the accused no report in writing has been made to his superior officer. About the requirement of Section 50 he categorically admits that accused appellant was not informed of his right of being searched either by a Magistrate or by a gazetted officer.

5. As per the case decided by the Honourable Supreme Court of India in State of Punjab vs. Balveersingh (AIR 1994 SC 1872), these requirements are found to be mandatory and breach thereof would be resulting into defeating the result of the case. That is exactly the situation here.

6. We therefore allow the appeal and set aside the order of conviction. The accused-appellant is directed to be set at liberty forthwith, if not required in any other case. Fine if paid is ordered to be refunded.

(N.J. Pandya, J)

24.09.1996 (Rajesh Balia, J)

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